

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
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DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
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AFFIDAVIT OF RONALD J. KISICKI IN SUPPORT OF  
APPLICATION FOR ORDER UNDER 11 U.S.C. §§ 327(e) AND  
1107(b) AND FED. R. BANKR. P. 2014 AUTHORIZING EMPLOYMENT  
AND RETENTION OF JAECKLE FLEISCHMANN & MUGEL, LLP AS  
INTELLECTUAL PROPERTY COUNSEL TO DEBTORS

STATE OF NEW YORK     )  
                                      )  
COUNTY OF MONROE    )

RONALD J. KISICKI, being duly sworn, deposes and states as follows:

1. I am an attorney admitted to practice before the courts of the states of New York, Michigan and Arizona and before the United States Patent and Trademark Office. I am a partner and principal in the law firm of Jaeckle Fleischmann & Mugel LLP ("JF&M"), proposed intellectual property counsel for Delphi Corporation ("Delphi") and certain of its subsidiaries and affiliates, the debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors").

2. I submit this affidavit (the "Affidavit")<sup>1</sup> in support of the Application For Order Under 11 U.S.C. §§ 327(e) AND 1107(b) and Fed R. Bankr. P. 2014 Authorizing Employment And Retention Of JF&M as Intellectual Property Counsel To Debtors (the "Application") nunc pro tunc to October 8, 2005, filed concurrently herewith.

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Application.

3. The addresses and telephone numbers of the offices of JF&M are as follows:

12 Fountain Plaza  
Buffalo, New York 14202  
(716) 856-0600

Centerpointe Corporate Park  
400 Essjay Road  
Suite 320  
Amherst, New York 14222  
(716) 250-1800

190 Linden Oaks  
Rochester, New York 14625  
(585) 899-2930

7047 East Greenway Parkway  
Suite 250  
Scottsdale, Arizona 85254  
(480) 659-2213

4. JF&M is well qualified to assist the Debtors in the manner described in the Application. JF&M has been providing Intellectual Property services to the Debtors since 1999 and has contributed to the successful issuance of hundreds of patents by the United States Patent Office to the Debtors. Below is a list of the attorneys who will have the primary responsibility for providing to the Debtors the services listed below.

- (a) Ronald J. Kisicki, partner
- (b) Dennis B. Danella, attorney
- (c) Katherine H. McGuire, attorney

5. Most importantly for present purposes, the patent attorneys and agents employed by JF&M are extensively familiar with the Debtors' technology, the Debtors' inventors, and the technology employed by competitors of the Debtors.

6. Further, JF&M has advised and counseled the Debtors regarding intellectual property matters. JF&M is familiar with the Debtors' inhouse patent counsel, and certain patent issues discussed between JF&M and inhouse patent counsel. Accordingly, the Debtors believe that JF&M is well qualified to serve as intellectual property counsel in an efficient and effective manner.

7. Generally, in connection with the Debtors' intellectual property needs, JF&M intends to provide to the Debtors the following types of professional services:

- (a) Preparation and filing of patent applications focusing on, among others, the following areas of technical expertise: automotive engines, automotive engine components, valve trains, direct injection gasoline systems, and general fuel handling systems;
- (b) Preparation and filing of responses to actions received from the U.S. and foreign patent offices related to, among others, the above-listed areas of technical expertise;
- (c) Preparation and filing of appeals with the United States Patent Office related to, among others, the above-listed areas of technical expertise;
- (d) Conduct searches related to, among others, the above-listed areas of technical expertise;
- (e) Providing patent opinions related to, among others, the above-listed areas of technical expertise;
- (f) Miscellaneous intellectual property advice and counsel related to copyrights, trademarks and know-how and contractual matters involving intellectual property.

8. In light of certain existing client representations on unrelated matters, the engagement of Skadden, Arps, Slate, Meagher, & Flom LLP ("Skadden") as the Debtors' bankruptcy counsel, the engagement of Shearman & Sterling LLP ("Shearman") as the Debtors' special counsel, the engagement of Togut, Segal & Segal LLP ("Togut") as the Debtors' conflicts counsel, or the engagement of any other counsel for the Debtors', JF&M will not be responsible for or undertake any representation with respect to (a) advising the Debtors concerning specific contracts and claims of certain of JF&M's existing clients and (b) reviewing, interpreting, or commenting on the specific contracts and claims of certain of JF&M's existing clients. These existing client relationships, and the scope of the carve-out from JF&M's retention, are discussed more fully below.

9. It is JF&M's understanding that the Debtors may request that JF&M undertake specific matters beyond the scope of Intellectual Property set forth above. Should JF&M agree in its discretion to undertake any such matter, it is JF&M's understanding that the Debtors will seek further order of this Court.

10. JF&M is making efforts together with the Debtors' other counsel to ensure that there is no duplication of effort or work between such firms and JF&M. It is JF&M's intention that the estates should receive the best value possible from the efficient coordination of work among its counsel. JF&M believes that its lawyers and the rest of the lawyers retained in these cases have to date delineated clearly, and will continue to delineate clearly, the division of work between them, so as to avoid any duplication of effort and to maximize the efficiencies of the proposed arrangement.

11. JF&M has agreed to accept as compensation for the services rendered in connection with its representation of the Debtors the current fee arrangement in place with the Debtors.

12. JF&M's current fees arrangement is on an hourly rate basis, based on the prevailing and reasonable hourly rates of the attorneys, patent agents and legal assistants working on related issues. With respect to transactional work, such as preparation and filing of patent applications, the preparation and filing of responses to office actions received from the patent office, and the preparation and filing of appeals, the billing of all fees and disbursements relating to each filing shall be reasonable and are held until the filing is complete, then billed in the succeeding month for payment, or within a reasonable time thereafter. With respect to all other work, all fees and disbursements are billed for payment in the month succeeding completion of the work, or within a reasonable time thereafter. A sample copy of an engagement letter setting forth the current fee arrangement for the preparing and filing of patent applications is attached as Exhibit A ("Engagement Letter").

13. A list of standard hourly rates for the attorneys and agents who are expected to render services in connection with the Debtors' Intellectual Property is attached hereto as Exhibit B. The hourly rates are subject to annual adjustments in accordance with JF&M's standard policies.

14. JF&M acknowledges that all amounts paid to JF&M during these chapter 11 cases are subject to final allowance by this Court. In the event that any fees or expenses paid to JF&M during these cases are disallowed by this Court, the fees and expenses will be disgorged by JF&M and returned to the Debtors or as otherwise ordered by this Court.

15. JF&M categorizes its billings by subject matter, in compliance with the applicable guidelines of the Office of the United States Trustee (the "U.S. Trustee Guidelines"). JF&M acknowledges its compensation in the Debtors' cases is subject to approval of this Court in accordance with section 330 of the Bankruptcy Code, Bankruptcy Rule 2016, and the U.S. Trustee Guidelines.

16. JF&M has conducted a check for conflicts of interest and other conflicts and connections with respect to the Debtors' bankruptcy cases. JF&M maintains a database containing the names of current, former, and potential clients and other principal parties related to such clients. I caused JF&M to review and analyze the conflict database to determine whether JF&M has any connection with the principal parties-in-interest in these chapter 11 cases, using information provided to JF&M by the Debtors and Skadden and information contained in the database, including (a) the names of the Debtors' prepetition lenders, (b) the names of significant creditors of the Debtors, and (c) the names of firms that the Debtors intend to or may employ during their chapter 11 cases.

17. Based upon this research, I have determined that JF&M has in the past represented, currently represents, and will likely in the future represent certain of the Debtors' creditors and other parties-in-interest in matters unrelated to the Debtors or these chapter 11 cases. I do not believe that the foregoing raise any actual or potential conflicts of interest of JF&M relating to the representation of the Debtors in these chapter 11 cases, but such relationships are disclosed out of an abundance of caution.

18. It is my intention that if JF&M becomes aware of any other connections of which it presently is unaware, JF&M will bring them to the attention of this Court and the U.S. Trustee.

Dated: Rochester, NY  
February 6, 2006

By: /s/ Ronald J. Kisicki  
Ronald J. Kisicki

Sworn to before me this  
6th day of February, 2006

/s Deborah DS Addair  
Notary Public